

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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XO Illinois, Inc. and Allegiance Telecom of )  
Illinois, Inc. )

vs. )

Illinois Bell Telephone Company, )  
d/b/a SBC Illinois )

In the Matter of a Complaint )  
Pursuant to 220 ILCS 5/13-515 )

Docket No. 05-\_\_\_\_\_

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TESTIMONY OF GLADYS G. LEEGER

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3 **Q. PLEASE STATE YOUR NAME AND TITLE.**

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5 A. My name is Gladys G. Leeger and I am the Director of Regulatory Contracts for XO  
6 Communications, Inc.

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8 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR XO ILLINOIS, INC.**  
9 **(“XO”) AND ALLEGIANCE TELECOM OF ILLINOIS, INC. (“ALLEGIANCE”).**

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11 A. In my position, I handle all contract negotiations, such as interconnection agreements,  
12 with incumbent local exchange carriers, including SBC Illinois.

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14 **Q. PLEASE DESCRIBE XO.**

15  
16 A. XO is a leading facilities-based competitive provider of telecommunications  
17 services formed under the laws of the State of Washington, and having its  
18 principal place of business at 11111 Sunset Hills Rd., Reston VA, 20190. XO  
19 offers a complete set of telecommunications services, including local and long  
20 distance voice services, as well as data services. XO is authorized by this  
21 Commission to provide local exchange and long distance communications

22 services. While XO provides service through its facilities-based network, XO is  
23 still dependent on leased facilities, including loops and transport that it purchases  
24 from incumbent local exchange carriers like SBC Illinois and needs to connect to  
25 SBC Illinois under the terms of an interconnection agreement.

26 **Q. PLEASE DESCRIBE ALLEGIANCE.**

27 A. Allegiance is a leading facilities-based competitive provider of  
28 telecommunications services formed under the laws of the State of Delaware, and  
29 having its principal place of business at 11111 Sunset Hills Rd., Reston VA,  
30 20190. Allegiance offers a complete set of telecommunications services,  
31 including local and long distance voice services, as well as data services.  
32 Allegiance is authorized by this Commission to provide local exchange and long  
33 distance communications services. While Allegiance provides service through its  
34 facilities-based network, Allegiance is still dependent on leased facilities,  
35 including loops and transport that it purchases from incumbent local exchange  
36 carriers like SBC Illinois and needs to connect to SBC Illinois under the terms of  
37 an interconnection agreement.

38 **Q. PLEASE DESCRIBE THE RELATIONSHIP BETWEEN XO AND**  
39 **ALLEGIANCE.**

40  
41 A. XO and Allegiance are wholly owned subsidiaries of XO Communications, Inc.

42 **Q. PLEASE PROVIDE SOME BACKGROUND REGARDING XO'S AND**  
43 **ALLEGIANCE'S COMPLAINT.**

44  
45 A. On February 11, 2005 SBC posted several Accessible Letters, including  
46 CLECALL05-017 and CLECALL05-019, which detailed SBC's unilateral plan of  
47 action following the Federal Communication Commission's ("FCC's") issuance

of the Triennial Review Remand Order (“TRRO”). On February 18, 2005, pursuant to our interconnection agreements, XO and Allegiance made formal requests to SBC to enter into good-faith negotiations in order to establish ICA amendments to address changes in law brought about by the TRRO. On February 24, 2005, SBC responded by stating that it had posted accessible letters<sup>1</sup> on its web site reflecting SBC’s view of its unbundling obligations and XO and Allegiance should execute them and send them to SBC. SBC further asserted that the matters of the accessible letters are a “part of a 13 state dispute process and therefore it would not be appropriate, nor is it necessary to initiate negotiations at this time.” SBC also indicated that it “will begin billing the FCC’s transition pricing modifications effective March 11, 2005” and “notwithstanding your ICA(s), orders received for elements that have been declassified through a finding of nonimpairment by the TRO Remand Order will not be accepted, beginning March 11, 2005.”

**Q. DO XO AND ALLEGIANCE HAVE INTERCONNECTION AGREEMENTS WITH SBC?**

A. Yes. XO and Allegiance both have Interconnection Agreements with SBC Illinois.

**Q. PURSUANT TO THE PARTIES’ INTERCONNECTION AGREEMENTS WITH SBC, IS SBC ENTITLED TO THE SELF-HELP THAT IT THREATENS?**

A. No.

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<sup>1</sup> CLECALL05-017, “Mass Market ULS/UNE-P/Order Rejection”; CLECALL05-019, “Unbundled High-Capacity Loops and Unbundled Dedicated Transport – Order Rejection.”

75 **Q. PLEASE EXPLAIN.**

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77 A. Attached to this testimony as Exhibits A, B and C are the relevant portions of the  
78 parties' interconnection agreements, including intervening law and dispute  
79 resolution. Exhibit A, for Allegiance, contains sections on Dispute Resolution,  
80 Intervening Law, and Amendments and Modifications. Exhibit B, for XO,  
81 contains sections on Dispute Resolution and Regulatory Changes. Exhibit C, for  
82 XO, contains amended language to the Intervening Law provision. SBC cannot  
83 unilaterally amend interconnection agreements. Rather, pursuant to intervening  
84 law and dispute resolution procedures, the parties must enter into good-faith  
85 negotiations. SBC's unilateral accessible letters do not comply with its  
86 interconnection agreement obligations. Moreover, as discussed above, SBC's  
87 February 24, 2005 response was essentially a refusal to participate in good-faith  
88 negotiations

89  
90 **Q. DO SBC'S ACCESSIBLE LETTERS MENTION ANY OTHER SOURCES**  
91 **OF SBC'S OBLIGATIONS BEYOND THE TRRO?**

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93 A. No. SBC's accessible letters simply reference the TRRO. They do not even  
94 consider its state law obligations pursuant to Section 13-801 of the Illinois Public  
95 Utilities Act. Further, it is my understanding that the TRRO did nothing to  
96 change SBC's interconnection agreement obligations or its obligations pursuant to  
97 47 U.S.C. §271.

98  
99 **Q. WHAT ARE THE PRACTICAL EFFECTS ON XO AND ALLEGIANCE IF**  
100 **SBC IS ALLOWED TO CUT-OFF NEW ORDERS ON MARCH 11, 2005?**  
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102 A. This would be a tremendous burden on XO and Allegiance to accommodate all  
103 the necessary changes for transferring customers to different services on a flash  
104 cut basis.

105

106 **Q. WOULD XO AND ALLEGIANCE HAVE THE TIME NECESSARY TO**  
107 **ACCOMMODATE THESE CHANGES?**

108 A. It is simply not possible to prepare customers much less make the actual changes  
109 necessary in such a short timeframe.

110 **Q. IS SBC'S THREATENED CUT-OFF DATE CONSISTENT WITH THE**  
111 **TRRO?**

112  
113 A. No. For example, SBC seems to threaten a blanket cut-off of orders for DS1 and  
114 DS3 loops and transport. SBC's threatened self-help makes a mockery of the  
115 process outlined in paragraph 234 of the TRRO. In part, paragraph 234 states:

116 We therefore hold that to submit an order to obtain a high-capacity  
117 loop or transport UNE, a requesting carrier must undertake a  
118 reasonably diligent inquiry and, based on that inquiry, self-certify  
119 that, to the best of its knowledge, its request is consistent with the  
120 requirements discussed in parts IV, V, and VI above and that it is  
121 therefore entitled to unbundled access to the particular network  
122 elements sought pursuant to section 251(c)(3). Upon receiving a  
123 request for access to a dedicated transport or high-capacity loop  
124 UNE that indicates that the UNE meets the relevant factual criteria  
125 discussed in sections V and VI above, the incumbent LEC must  
126 immediately process the request. To the extent that an incumbent  
127 LEC seeks to challenge any such UNEs, it subsequently can raise  
128 that issue through the dispute resolution procedures provided for in  
129 its interconnection agreements. In other words, the incumbent  
130 LEC must provision the UNE and subsequently bring any dispute  
131 regarding access to that UNE before a state commission or other  
132 appropriate authority.

133

134 (footnotes omitted).

135

136 **Q. WHAT TYPE OF RELIEF IS XO AND ALLEGIANCE SEEKING FROM**  
137 **THE COMMISSION?**

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139 A. XO and Allegiance assert that SBC's actions violate state law, including 200  
140 ILCS 5/13-514, and federal law. XO and Allegiance are seeking injunctive relief  
141 from the Commission because SBC threatens to unilaterally amend the parties'  
142 interconnection agreement and immediate stop provisioning certain UNEs.

143  
144 **Q. PLEASE DESCRIBE WHY INJUNCTIVE RELIEF IS PROPER.**

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146 A. Injunctive relief is proper because SBC threatens to unilaterally disrupt XO's and  
147 Allegiance's rights to obtain unbundled network elements pursuant to Illinois law  
148 and federal law on March 11, 2005.

149  
150 **Q. ARE XO AND ALLEGIANCE LIKELY TO SUCCEED ON THE MERITS?**

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152 A. Yes. I first note that these issues will be more thoroughly discussed in XO's and  
153 Allegiance's emergency motion. Although I am not an attorney, it is my opinion  
154 that SBC's threatened self-help is contrary to the TRRO. For example, the TRRO  
155 is, by its terms, not self-executing on March 11, 2005. Rather, the FCC directed  
156 *both* incumbents and competing carriers to "negotiate in good faith" over "any  
157 rates, terms, and conditions necessary to implement our rule changes." *TRRO* at  
158 233. The FCC expects carriers "to modify their interconnection agreements  
159 *including completing any change of law processes*" to implement the *TRO*  
160 *Remand Order. Id.* ¶ 227. Further, it is my understanding that the TRRO did not  
161 effect SBC's obligations under state law, including 220 ILCS 5/13-801 and  
162 federal law, including interconnection agreement obligations under 47 USC §252  
163 and obligations SBC assumed under 47 USC §271 by filing for interLATA  
164 authority.

165  
166 **Q. IN YOUR OPINION, ABSENT AN INJUNCTION, WOULD XO AND**  
167 **ALLEGIANCE HAVE AN ADEQUATE REMEDY AT LAW?**  
168

169 A. No. If the Commission allows SBC to follow through with its threat SBC will not  
170 accept “orders received for elements that have been declassified through a finding  
171 of nonimpairment by the TRO Remand Order” as of March 11, 2005. If XO and  
172 Allegiance are forced to turn away customers starting on March 11, 2005, those  
173 customers will not wait around until XO or Allegiance are able to fulfill their  
174 requests – they will find another carrier, most likely SBC, to provide them  
175 service. The same analysis applies for XO’s and Allegiance’s existing customers.  
176 If XO and Allegiance are unable to provide additional services, the companies  
177 risk losing their existing customers. Thus, relief that XO and Allegiance may  
178 receive in the future will not make the companies whole. XO and Allegiance  
179 need assurance that their businesses will not be disrupted by SBC.

180  
181 **Q. ABSENT AN INJUNCTION, WILL XO AND ALLEGIANCE BE**  
182 **IRREPARABLY HARMED BY SBC’S THREATENED SELF-HELP?**  
183

184 A. Yes. If SBC is allowed to follow through with its threat, beginning on March 11,  
185 2005 SBC will not accept “orders received for elements that have been  
186 declassified through a finding of nonimpairment by the TRO Remand Order.”  
187 XO and Allegiance would be forced to turn away new customers and unable to  
188 provide services to existing customers, resulting in irreparable and unquantifiable  
189 damages to XO’s and Allegiance’s goodwill and reputation.

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191  
192 **Q. WOULD XO’S AND ALLEGIANCE’S CUSTOMERS BE IRREPARABLY**  
193 **HARMED BY SBC’S THREATENED SELF-HELP?**

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195 A. Yes. If SBC has its way, XO's and Allegiance's existing customers and potential  
196 new customers would be denied their preferred carrier.

197  
198 **Q. IF THE COMMISSION GRANTED XO'S AND ALLEGIANCE'S**  
199 **REQUEST, WOULD INJUNCTIVE RELIEF IRREPARABLY HARM**  
200 **SBC?**

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202 A. No. XO and Allegiance are only asking that SBC maintain the status quo until the  
203 Commission approves any necessary amendment to the parties' interconnection  
204 agreements. While SBC would be required to maintain the status quo pending  
205 Commission action – a requirement consistent with the parties' interconnection  
206 agreements – XO and Allegiance would be forced to turn away potential  
207 customers and neglect existing customers. Finally, because the TRRO clarified  
208 that pricing for network elements, including loops and transport, will be subject to  
209 a true-up mechanism and therefore the ILEC has the opportunity to argue for any  
210 relevant changes under a ratemaking process. The parties are expected to use the  
211 dispute process contained in their respective interconnection agreements. *TRRO at*  
212 *234.* Therefore, any balance of hardships in this case clearly favors XO and  
213 Allegiance.

214 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

215 A. Yes it does.

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